

117980

**DECISION**



21353 Cohen

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-205489

DATE: April 1, 1982

MATTER OF: R. E. White & Associates, Inc.

**DIGEST:**

1. Since small purchases do not require maximum competition, GAO will review a contracting agency's approach to defining the field of competition only in a case of fraud or intentional misconduct, or where it appears that there has not been a reasonable effort to secure price quotations from a representative number of responsible firms. Once the field of competition is defined, however, GAO will review the procurement to insure that it is conducted and concluded consistent with the small purchase selection procedures and the concern for a fair and equitable competition that is inherent in any procurement.
2. In view of the need for the orderly and expeditious fulfillment of an agency's requirements, GAO will not disturb a small purchase contract where after award the contracting agency discovers a lower priced offer that had been timely received but misplaced before it could be recorded, absent evidence of a conscious or deliberate effort to prevent award to that offeror.

R. E. White & Associates, Inc. protests the Defense Logistics Agency's (DLA) issuance of a purchase order for pressure switches to Hydra Electric Co. under request for quotations (RFQ) DLA 900-81-T-BT36. Quotations in response to the RFQ, which was effected under the small business procedures at Defense Acquisition Regulation (DAR) § 3-600 et seq. (1976 ed.), were due by April 19, 1981, and delivery was requested by June 22. The purchase order was issued on May 17 at \$205 per unit with delivery in 300 days. White protests that it offered to furnish surplus units for \$63.25 each by the delivery date specified in the RFQ.

We deny the protest.

White inquired as to the status of the purchase on October 1. The buyer at DLA responded in an October 26 letter advising of the award, and that the agency disregarded White's lower quotation because in a letter sent by White one month before the RFQ was issued the firm expressed its displeasure with the activity's procurement practices and stated that it therefore was "suspending all new quotations and proposals." The buyer stated that Hydra Electric's quotation thus "was the only active quote available to us at the time of award." White complains that it rescinded the letter "suspending" its quotations by telegram before this RFQ was issued.

In response to White's protest, DLA reports that the advice given to White by the buyer was erroneous. DLA states that it actually did not know that White had submitted a lower quotation at the time the agency issued the purchase order to Hydra Electric. DLA asserts that it first discovered White's quotation when the contracting officer reviewed the procurement records to respond to White's October 1 inquiry about the procurement's status. The agency asserts that the quotation appears to have been placed in the procurement file for this solicitation after the purchase order was issued. DLA notes, however, that the quotation evidently was timely, and speculates that it had been misplaced or mishandled by the Government after its receipt and before it could be recorded in the computer that abstracts responses to solicitations for this type of requirement. DLA suggests that the buyer's advice that White's quotation consciously had been disregarded reflected a misunderstanding on his part of the contracting officer's report of his review. DLA's report also indicates that the surplus switches identified by White in the firm's quotation would have been acceptable.

DLA nonetheless notes that this Office has stated that our review of small purchases is limited to cases of fraud or intentional misconduct, or where it appears that the procuring activity has not made a reasonable effort to secure price quotations from a representative number of responsible firms as anticipated by small purchase regulations. See Ikard Manufacturing Company, B-192308, October 25, 1978, 78-2 CPD 301. On the basis of its view that its actions were at most negligent, and because it did solicit quotations from four firms, DLA argues that we should not consider the merits of the protest.

The limited review standard noted by DLA, however, is intended to apply only to protests against the contracting agency's approach to defining the field of competition for a small purchase. For example, we will apply that standard to a protest against allegedly restrictive RFQ specifications, e.g., Tagg Associates, B-191677, July 27, 1978, 78-2 CPD 76, as well as to a protest that a firm simply was not solicited for a quotation, e.g., Security Assistance Forces and Equipment OHG, B-195830, February 8, 1980, 80-1 CPD 114. We limit our consideration of these types of protests because the small purchase procedures, which are designed to minimize the administrative cost that otherwise might be the equivalent of or exceed the cost of acquiring relatively inexpensive items, permit purchases without the need to maximize competition, in contrast to other procurements. The contracting officer need only solicit quotations from a reasonable number of potential sources, judge the advantages and disadvantages of particular products in relation to the prices quoted, and determine in good faith which quotation will best meet the Government's needs. Security Assistance Forces & Equipment OHG, supra. The fact that a particular firm may have been precluded or excluded from the competition is irrelevant to the propriety of the purchase as long as there was no fraud or intentional misconduct, and the competition was reasonable in scope.

The limited review standard, however, is not intended to suggest that simply because any restrictions on the competition were not the result of fraud or intentional misconduct and the competition was reasonable in scope we will not review a small purchase after quotations are solicited and the field of competition thus is defined. The procurement still must be conducted and concluded consistent with the small purchase selection procedures and the concern for a fair and equitable competition that is inherent in any procurement. Thus, for example, although the award in a small purchase need not be to the firm offering the lowest quotation if another is more advantageous to the Government, JCL Services, Inc., B-182994, June 16, 1975, 75-1 CPD 343, we will review an unsuccessful offeror's protest against a contracting officer's decision that a higher quotation in fact was more advantageous to the Government. See City-Wide Photography Consultants, Inc., B-203193, June 3, 1981, 81-1 CPD 444. We believe that our review similarly is appropriate here.

We deny the protest, however. It is unfortunate that White's timely quotation was misplaced after receipt and before it was recorded, and was not discovered until after

DLA issued the purchase order to Hydra Electric. Nonetheless, we believe that the general need for the orderly and expeditious fulfillment of an agency's requirements precludes disturbing a small purchase contract based on a misplaced offer discovered after award, absent a showing of a conscious or deliberate effort by the agency to prevent the selection of that offeror.

There is no evidence here of any deliberate effort by contracting personnel to preclude White from receiving the order in issue. We therefore will not object to the award to Hydra Electric.

The protest is denied.

*Milton J. Jordan*  
for Comptroller General  
of the United States